

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

STEVE MITCHELL ALLEN,

Case No.: 2:14-cv-00675-GMN-NJK

VS.

LIBERTY MUTUAL INSURANCE  
COMPANY, DOES I through X, inclusive,  
and ROES XI through XX, inclusive,

### Defendants.

## ORDER

LIBERTY MUTUAL INSURANCE  
COMPANY, DOES I through X, inclusive,  
and ROES XI through XX, inclusive,

## Defendants.

There are no pending motions before the Court in this matter. However, because the Court lacks subject matter jurisdiction over the case, the Court remands this case to the Eighth Judicial District Court.

## I. BACKGROUND

Plaintiff Steve Mitchell Allen (“Plaintiff”) originally filed his complaint in state court on April 9, 2014. *See* (Compl. pp. 8-12, Ex. A to Not. of Removal, ECF No. 1.) On May 1, 2014, Defendant Liberty Mutual Insurance Company (“Defendant”) removed the action to this Court asserting that this Court has original jurisdiction under 28 U.S.C. § 1332(a)(1). (Not. of Removal 1:25-27, ECF No. 1.) Specifically, Defendant asserts that Plaintiff is domiciled in Nevada and that Defendant is domiciled in Massachusetts. (*Id.* at 2:1-5.) Defendant further states that “[t]he amount in controversy exceeds the sum of \$75,000.00.” (*Id.* at 2:12-14.)

On May 5, 2014, after reviewing Defendant's Notice of Removal, the Court entered an Order to Show Cause why the case should not be remanded to the state court for lack of subject matter jurisdiction. (Order to Show Cause, ECF No. 6.) Specifically, the Court requested that

1 Defendant provide additional basis for its assertion that the case involved the requisite amount in  
2 controversy. (*Id.*) Subsequently, on May 7, 2014, Defendant filed a Statement Regarding  
3 Removal (ECF No. 8) and on May 15, 2014, Defendant filed a Response to this Court's Order to  
4 Show Cause. (ECF No. 9.)

5 **II.     LEGAL STANDARD**

6       Federal courts are courts of limited jurisdiction, possessing only those powers granted by  
7 the Constitution and by statute. *See United States v. Marks*, 530 F.3d 799, 810 (9th Cir. 2008)  
8 (citation omitted). For this reason, “[i]f at any time before final judgment it appears that the  
9 district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).  
10 Furthermore, a court may raise the question of subject matter jurisdiction *sua sponte* at any time  
11 during the action. Fed. R. Civ. P. 12(h)(3); *Snell v. Cleveland, Inc.*, 316 F.3d 822, 826 (9th Cir.  
12 2002).

13       A defendant may remove an action to federal court only if the district court has original  
14 jurisdiction over the matter. 28 U.S.C. § 1441(a). “Removal statutes are to be ‘strictly construed’  
15 against removal jurisdiction. *Nevada v. Bank of America Corp.*, 672 F.3d 661, 667 (9th Cir.  
16 2012) (quoting *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002)). The party  
17 asserting federal jurisdiction bears the burden of overcoming the presumption against federal  
18 jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Specifically,  
19 federal courts must reject federal jurisdiction “if there is any doubt as to the right of removal in  
20 the first instance.” *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992) (quoting *Libhart v. Santa  
21 Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)); *see also Matheson v. Progressive  
22 Specialty Ins. Co.*, 319 F.3d 1089, 1090-91 (9th Cir. 2003) (per curiam) (noting that “[w]here it is  
23 not facially evident from the complaint that more than \$75,000 is in controversy, the removing  
24 party must prove, by a preponderance of the evidence, that the amount in controversy meets the  
25 jurisdictional threshold”).

1 District courts have jurisdiction in two instances. First, district courts have subject matter  
2 jurisdiction over civil actions that arise under federal law. 28 U.S.C. § 1331. Second, district  
3 courts have subject matter jurisdiction over civil actions where no plaintiff is a citizen of the  
4 same state as a defendant and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a).

5 **III. DISCUSSION**

6 In this case, Defendant based its removal of this action solely on diversity of citizenship  
7 pursuant to 28 U.S.C. § 1332(a)(1). However, Defendant has failed to carry its burden of  
8 establishing that this Court has subject matter jurisdiction over this case. Although Defendant  
9 established that the diversity of citizenship requirement is satisfied, Defendant failed to show, by  
10 a preponderance of the evidence, that the amount in controversy exceeds \$75,000.

11 In response to the Court's Order to Show Cause (ECF No. 6), Defendant asserts that  
12 "damages may reasonably exceed" the required amount in controversy because the Complaint  
13 sets forth claims for "a sum in excess of ten thousand dollars (\$10,000) for his breach of contract  
14 claim; a sum in excess of ten thousand dollars (\$10,000) for his contractual breach of the implied  
15 covenant of good faith and fair dealing claim; a sum in excess of ten thousand dollars (\$10,000)  
16 for his tortious breach of the implied covenant of good faith and fair dealing claim; a sum in  
17 excess of ten thousand dollars (\$10,000) for his bad faith claim; and a sum in excess of ten  
18 thousand dollars (\$10,000) for his unfair trade practices claim [as well as] general damages in  
19 excess of ten thousand dollars (\$10,000), special damages in excess of ten thousand dollars  
20 (\$10,000), attorney's fees and costs, and prejudgment interest." (Def.'s Resp. to OSC 4:10-23,  
21 ECF No. 9.)

22 However, the Ninth Circuit has already expressed that such a bare assertion is inadequate  
23 to establish federal jurisdiction. *See Matheson*, 319 F.3d at 1091. For example, in *Matheson*, the  
24 complaint sought "'in excess' of \$10,000 for economic loss, 'in excess' of \$10,000 for emotional  
25 distress, and 'in excess' of \$10,000 for punitive damages." *Id.* However, the complaint was

1 devoid of any indication of how much “in excess” of \$10,000 the plaintiff was seeking. *Id.*  
 2 Accordingly, the court held that this assertion alone was insufficient to find that the defendant  
 3 “made the required showing of the amount in controversy.” *Id.*; *see also Wilson v. Union Security*  
 4 *Life Ins. Co.*, 250 F. Supp. 2d 1260, 1263 (D. Idaho 2003) (finding that Defendant’s reliance on  
 5 “common sense” was insufficient to establish that the amount in controversy exceeded \$75,000).

6 Here, as Defendant noted, the complaint seeks “a sum in excess of ten thousand dollars  
 7 (\$10,000)” under various different claims. However, many of the claims appear to be  
 8 duplicitous,<sup>1</sup> and, similar to *Matheson*, Plaintiff’s Complaint does not detail how much in excess  
 9 of \$10,000 is being sought under each claim. Furthermore, Defendant failed to provide  
 10 additional facts from which the Court could conclude, by a preponderance of the evidence, that  
 11 the amount in controversy exceeds \$75,000.<sup>2</sup> Rather, Defendant attempted to establish that the  
 12 amount in controversy was met by implying the Court should combine the total alleged damages  
 13 and find that such damages “may reasonably exceed the statutory jurisdictional amount of  
 14 \$75,000.00.” (Def.’s Resp. to OSC 4:10-23, ECF No. 9.) However, this bare assertion is

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 17 <sup>1</sup> Plaintiff’s claim for breach of contract is duplicative with his claim for contractual breach of the implied covenant  
 18 of good faith and fair dealing and his claim for tortious breach of the implied covenant of good faith and fair  
 19 dealing. *See Careau & Co. v. Sec. Pac. Bus. Credit, Inc.*, 272 Cal. Rptr. 387, 404 (Cal. Ct. App. 1990) (finding a  
 20 claim for breach of implied covenant of good faith to be a duplicative claim for contract damages). Therefore, any  
 award under one theory would prevent recovery under the other alternate theories. *See Countrywide Home Loans,*  
*Inc. v. Thitchener*, 192 P.3d 243, 248 (Nev. 2008) (“While plaintiffs are permitted to plead alternative or different  
 theories of relief based on the same facts, plaintiffs may not recover more than their total loss plus any punitive  
 damages assessed.”) (internal quotations omitted).

21 <sup>2</sup> Defendant correctly notes that a request for exemplary or punitive damages within a complaint is considered  
 22 when determining whether the amount in controversy exceeds \$75,000. *See Guglielmino v. McKee Foods Corp.*,  
 23 506 F.3d 696, 700 (9th Cir. 2007) (noting that, among other things, any exemplary or punitive damages or attorney  
 24 fees that are sought in the complaint must be included in the calculation to determine the amount in controversy).  
 25 However, Defendant has failed to provide adequate evidence establishing that the amount sought would result in  
 the amount in controversy exceeding the statutorily required amount. Defendant’s citation to Nev. Rev. Stat. §  
 42.005 is unpersuasive. That statute states that “an award of exemplary or punitive damages made pursuant to this  
 section *may not exceed . . . [t]here hundred thousand dollars if the amount of compensatory damages awarded to*  
 the plaintiff *is less than \$100,000.*” Nev. Rev. Stat. § 42.005 (emphasis added). This statute provides the  
 maximum amount that Plaintiff may seek; the statute does not provide persuasive evidence as to the actual amount  
 in controversy.

1 insufficient and fails to persuade the court that there is no “doubt as to the right of removal in the  
2 first instance.” *Gaus*, 980 F.2d at 566 (internal quotation marks omitted).

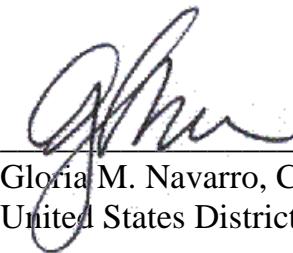
3 Moreover, the facts in this case actually cast further doubt on whether the amount in  
4 controversy exceeds \$75,000. As noted by Defendant, Plaintiff was involved in a car accident  
5 and incurred only \$20,000 in medical bills. (Def.’s Resp. to OSC 3:23-26, ECF No. 9.) He then  
6 settled his claim against the other driver’s insurance company for the policy limits, the exact  
7 amount of which is unknown. (*Id.* 3:7-10.) It was only after this settlement that Plaintiff filed the  
8 present suit seeking to recover under the Underinsured Motorist Provisions of his policy with  
9 Defendant. (*Id.* 3:10-14.) Therefore, because the medical damages were only \$20,000 and much  
10 of the underlying damages to Plaintiff were satisfied by his settlement with the third-party  
11 insurance carrier, the known facts of the case further undermine Defendant’s bare assertions that  
12 the amount in controversy requirement has been met.

13 For these reasons, Defendant has failed to carry its burden of proving by a preponderance  
14 of the evidence that the amount in controversy exceeds \$75,000. Accordingly, this Court lacks  
15 subject matter jurisdiction under 28 U.S.C. § 1332 and the case must be remanded to state court.

16 **IV. CONCLUSION**

17 **IT IS HEREBY ORDERED** that this case is hereby remanded to the Eighth Judicial  
18 District Court. The Clerk of the Court shall remand this case back to state court and thereafter  
19 close this court’s case.

20 **DATED** this 22nd day of May, 2014.

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Gloria M. Navarro, Chief Judge  
United States District Judge  
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